Supreme Court, U.S.
FILED
OCT 5 1995
OFFICE OF THE CLERK

No. 95-391

In The

Supreme Court of the United States

October Term, 1995

EVELYN J. WOOD AND ERIK C. MOEBIUS,

Petitioners,

v.

MICHAEL A. WASH AND
NATIONWIDE INSURANCE COMPANY,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

I.

Respondents dispute Petitioners' characterization of the issues and believe the issue is as follows:

Whether the Bankruptcy Court, the District Court and the United States Fifth Circuit Court of Appeals correctly applied collateral estoppel and granted summary judgment that the sanctions against Petitioner are non-dischargeable pursuant to 11 U.S.C. § 523(a)(6).

RULE 29.1 STATEMENT

Petitioners' list of parties is correct.

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TO THE UNITED STATES SUPREME COURT:

Nationwide Insurance Company ("Nationwide") and Michael A. Wash ("Wash") present their Brief in Opposition to the Petition for Writ of Certiorari by Evelyn J. Wood and Erik C. Moebius.

JURISDICTIONAL STATEMENT

This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

In a separate pre-bankruptcy lawsuit in the United States District Court ("San Antonio District Court Suit"), Erik Moebius ("Moebius") as an attorney filed numerous pleadings which resulted in the entry of a 114-Page Memorandum and Recommendation of the United States Magistrate, a 17-Page Order Accepting the Magistrate's Recommendations by a United States District Judge and ultimately an Amended Judgment. In these Orders, the United States District Judge made numerous Findings of Fact and Conclusions of Law which resulted in Rule 11 Sanctions against Moebius and in favor of Nationwide and Wash (collectively "Respondents") in the amounts of $38,994.00 and $15,403.62, respectively.

Shortly thereafter, Moebius and his wife, Evelyn J. Wood, filed a Petition for Relief under the United States Bankruptcy Code. Nationwide and Wash filed adversary proceedings to have their claims for sanctions declared non-dischargeable pursuant to 11 U.S.C. § 523(a)(6).

The Bankruptcy Court held that Findings of Fact rendered in the San Antonio District Court Suit by virtue of collateral estoppel could not be re-litigated and granted Wash and Nationwide's Motions for Partial Summary Judgment holding that their sanction claims are non-dischargeable under 11 U.S.C. § 523(a)(6).

Moebius appealed the partial summary judgments granted by the Bankruptcy Court. These appeals were consolidated, and the United States District Court and the Fifth Circuit Court of Appeals affirmed the Bankruptcy Court's summary judgments in favor of Nationwide and Wash.

ARGUMENTS SUPPORTING DENIAL OF THE WRIT

1. Summary judgment was properly granted based on the Doctrine of Collateral Estoppel in accordance with established precedent within the Fifth Circuit. The Doctrine of Collateral Estoppel applies in dischargeability actions in bankruptcy. *In re: Davis*, 3 F.3d 113, 114 (5th Cir. 1993). *In the Matter of Shuler*, 722 F.2d 1253 (5th Cir. 1984), *cert. den'd*, 469 U.S. 817 (1984). The decision rendered by the Bankruptcy Court below was ultimately affirmed by the Fifth Circuit Court of Appeals.

2. The law as applied in this case is consistent with the law of other circuits. Petitioners cite *In re: Wrenn*, 791 F.2d 1542 (11th Cir. 1986) and assert that its holding is contrary to the law as applied in this case. Examination of *In re: Wrenn* reveals Petitioners misplace their reliance.

The facts in the *Wrenn* case are markedly different from the record provided by the San Antonio District Court Suit. In *Wrenn*, the Debtor, pro se, filed a Title VII lawsuit. *Wrenn*, 791 F.2d 1542. The trial court dismissed the Debtor's Title VII lawsuit finding that *Wrenn* failed to present a *prima facie* case and awarded attorney's fees to the Defendant. Since the Debtor had not made a *prima facie* case under Title VII, the trial court found that *Wrenn's* case was frivolous. *Id.* at 1543. Such a finding, alone, was sufficient to support an award of attorney's fees and costs under Title VII; however, the bankruptcy court held that such finding, alone, was factually insufficient to support a judgment of non-dischargeability under 11 U.S.C. § 523(a)(6). *Id.* at 1544.

While Title VII does not require any inquiry into the intent, conduct or motivations of the Debtor, both Rule 11 and 11 U.S.C. § 523(a)(6) require proof concerning intent. These provisions require findings concerning intent, and unlike, in *Wrenn*, the San Antonio District Court Suit supplied such a finding. Further, unlike the *Wrenn* case, the Judge and Magistrate in the San Antonio District Court Suit specifically found that Moebius had acted with an improper purpose, for the purpose of harassment and to multiply Defendant's costs of litigation. As shown by the Orders of the San Antonio District Court Suit, the Judge and Magistrate went to great lengths to specify each element of Rule 11 that was violated and that Erik Moebius acted intentionally and without just cause or excuse.

3. Respondents object to the fourth reason to grant Writ asserted by Petitioner. Specifically, Petitioner asserts that he faces disbarment proceedings as a result of the actions which brought about the Rule 11 Sanctions against Moebius. Nowhere in the record is there any evidence of the alleged disbarment proceeding and it was not considered by any Court below. Such argument is not based on any matter within the record and has not been asserted prior to the Petition for Writ of Certiorari. Therefore, Respondent and this Court have no evidence or basis to evaluate this new contention.

4. The compelling reason why Writ should not be granted is that the merits of the underlying case support the Bankruptcy Court's granting of partial summary judgment declaring the Rule 11 Sanctions non-dischargeable. The Bankruptcy Court was faced with a 114-Page Memorandum and Recommendation of the United States Magistrate Judge, the 17-Page Order accepting the Magistrate's Recommendations of the District Judge and the ultimate Amended Judgment. These findings which are more fully set forth in the Bankruptcy Court's published decision indicate that Moebius' pre-bankruptcy action was taken "for the purpose of harassing [Nationwide and Wash]" and "motivated by an improper purpose". In fact, the findings of the Magistrate Judge accepted by the District Court in the San Antonio District Court Suit state in pertinent part as follows:

> "Seldom, if ever, before has this Court been witness to a civil lawsuit in which a party has asserted more unsubstantiated, scurrilous allegations of perfidy on the part of group of Defendants that has been presented by Plaintiffs

> herein in their Second Amended Petition (sic). . . . The plaintiffs' counsel's action [Moebius] in filing Plaintiffs' Second Amended Petition [sic] in this lawsuit constituted an abuse of legal process rarely approached in the annals of this Court."

The facts decided in the San Antonio District Court Suit were actually litigated and necessary to the decision. Consequently, the Bankruptcy Court properly applied the law of collateral estoppel and precluded re-litigation of these facts. *See In re: Davis*, 3 F.3d at 114. These Findings of Fact as a matter of law supported entry of an Order Granting the Non-Dischargeability of such claims pursuant to 11 U.S.C. § 523(a)(6). The findings by the San Antonio District Court are the legal and factual equivalent of a willful and malicious injury and supported summary judgment under 11 U.S.C. § 523(a)(6). *See Seven Elves, Inc. v. Eskenazi*, 704 F.2d 241 (5th Cir. 1983). Therefore, all the Courts below correctly applied the Doctrine of Collateral Estoppel and precluded re-litigation of fact findings made by the San Antonio District Court, and the Courts below correctly found that these facts as a matter of law made the sanction claims non-dischargeable under 11 U.S.C. § 523(a)(6).

CONCLUSION

The Bankruptcy Court correctly granted partial summary judgment to Nationwide and Wash declaring their claims against Moebius non-dischargeable pursuant to 11 U.S.C. § 523(a)(6). The United States District Court and

the Fifth Circuit Court of Appeals correctly affirmed this decision.

The Court of Appeals' Judgment of Affirmance was correct and Certiorari should be denied. Nationwide and Wash so pray.

Respectfully submitted,

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